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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,313	04/25/2000	Amit D. Agarwal	249768020US1	9641

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EXAMINER

JAKETIC, BRYAN J

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 09/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/558,313

Applicant(s)

AGARWAL, AMIT D.

Examiner

Bryan Jaketic

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: in line 8 of the claim, "indicating" should presumably be --indication--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenney. Kenney discloses a method in a data processing system for automatically initiating the replenishment of a consumable product comprising: receiving an order for a customer and filling that order on a first date and estimating a target date for suggesting replenishment (col. 11, lines 12-34). The user is provided with an indication that the product should be replenished (see Figures 5 and 7 and col. 12, lines 50-54). The consumer then requests replenishment of the product by performing a single interaction, and the product is ordered (Fig. 10A). The target date is estimated based on the first date and the average life span of the item, which in turn is determined by the length of intervals between purchases (col. 11, lines 26-34). It is inherent that Kenney

employs a computer memory and a computer-readable medium containing instructions for carrying out the method.

Kenney does not disclose the date on which the system provides the indication to the consumer. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an indication to the consumer on or before the target date, so the consumer will not run out of the item.

The items being sold in Kenney are physical articles. However, the type of item being sold does not alter how the system functions. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the system of Kenney to sell any type of item because the type of item does not patentably distinguish the claimed invention.

Kenney does not teach the step of determining a target date based on availability of an item. However, it is common in the art to only suggest the purchase of an item if that item is in stock. It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to use the availability of the item to determine a target date so that the indication is sent only if the item is available.

Kenney does not teach the step of determining a target date based on the size of the item. However, it is commonly known in the art that the size of an item will impact the length of time it takes to consume. It would have been obvious to one of ordinary

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skill in the art at the time the invention was made to determine a target date based on the size of the item, so that a more accurate date is determined.

Kenney does not teach the step of determining a target date base on an expiration date. However, it is commonly known in the art that items need to be replaced after they expire. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ to determine a target date based on an expiration date so that a customer will replace expired items.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mowery et al and Garg et al disclose methods for replenishing inventory.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Jaketic whose telephone number is (703) 308-0134. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

bj
September 20, 2002


9/20/02